

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District
Name (under which you were convicted):		Docket of Case No:
<i>Jose M. Bonilla-Siciliano</i>		<i>06-00305-01-CR-W-FJG</i>
Place of Confinement	Prisoner No:	
<i>Leavenworth Detention Center</i>	<i>25818-359</i>	
Movant	V.	United States of America
<i>Jose m. Bonilla-Siciliano</i>		

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
United States District Court, Western District of Missouri
- (b) Criminal docket or case number (if you know): *06-00305-01-CR-W-FJG*
2. (a) Date of the judgment of conviction (if you know): *4-22-08*
- (b) Date of sentencing: *9-3-08*
3. Length of sentence: *70 months*
4. Nature of crime (all counts): *REENTRY OF DEPORTED ALIENS - all in violation of Title 18, USC 1326.*
5. (a) What was your plea: (Check one)
☒ (1) Not guilty (2) Guilty (3) Nolo contendere (no contest)
- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? *N/A*

6. If you went to trial, what kind of trial did you have? (Check one) ☒ Jury Judge Only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? ☒ Yes No

8. Did you appeal from the judgment of conviction? Yes ☒ No

9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): N/A

(c) Result: N/A

(d) Date of result (if you know): N/A

(e) Citation of the case (if you know): N/A

(f) Grounds raised: N/A

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

(5) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes

☒ No

11. If your answer to Question 10 was "Yes," give the following information:

(a)(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?
Yes No

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you file any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?
Yes No

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition Yes No N/A

(2) Second petition Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

SEE ATTACHED DOCUMENTS

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment or conviction, did you raise this issue?
Yes No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?
Yes No

(2) If your answer to Question (c)(1) is "Yes," state:
Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?
Yes No

(4) Did you appeal from the denial of your motion, petition, or application?
Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?
Yes No

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket case number (if you know): _____

Date of the court's decision: _____

Result: (attach a copy of the court's opinion or order if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: *District Court Did not make Factual findings of PSI*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): _____

SEE ATTACHED DOCUMENTS

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?
Yes No

(4) Did you appeal from the denial of your motion, petition, or application?
Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?
Yes No

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket case number (if you know): _____

Date of the court's decision: _____

Result: (attach a copy of the court's opinion or order if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: *Ineffective Assistance of Counsel*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): _____

SEE ATTACHED DOCUMENTS

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes", state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes No

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket case number (if you know): _____

Date of the court's decision: _____

Result: (attach a copy of the court's opinion or order if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): _____

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?
Yes No

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket case number (if you know): _____

Date of the court's decision: _____

Result: (attach a copy of the court's opinion or order if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

NO

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes NO

If "Yes," state the name and location of the court, the docket or case number, the type or proceeding, and the issues raised: _____

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

*Ronna Holloman-Hughes
818 Grand Ave - ste 340
Kansas City, MO 64106*

same as a.

(b) At arraignment and plea: _____

(c) At trial: _____

*Cenobio Lozano, Jr
3001 N. State Route 291 - ste 10
Harrisonville, MO 64701*

- (d) At sentencing: same as c.
- (e) On appeal: N/A
- (f) In any post-conviction proceeding: N/A
- (g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date of the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitation as contained in 28 U.S.C § 2255 does not bar your motion.* (see below)

N/A

*The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period limitations shall apply to a motion under this section. The limitation period shall run from the latest of:

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, Movant asks that the Court grant the following relief: Reinstate his Direct Appeal and Appoint movant Counsel for the Appeal

or any other relief to which movant is entitled.

Signature of Attorney (if any)

I, declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on SEPT.
30 - 2008 - (month, date, year).

Executed (signed) on SEP/30/08 (date)



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. _____

Continuation from Issue 1, pg 4:

This first ground alleges that Counsel failed to file a notice of Appeal and failed to Appeal to issues that he stated on record that he would appeal, as well as issues that movant requested him to appeal, as supported by record.

a.) During counsel's representation, counsel moved this Honorable Court for a suppression hearing to address a claim of misidentification, and establish a factual record that would show that the DMS Agent made false and/or misleading statements. Counsel however, while not providing the court with any document support nor supporting witnesses, nevertheless, agreed to appeal the Court's denial, and also allowed movant to sign an affidavit to the desire and request to appeal the suppression issue.

However, in the second week of September, subsequent to the Sentencing hearing, counsel wrote movant and told movant that he does not believe there are any issues to be raised on appeal


and he will not appeal his case.

b.) Further, Counsel did not appeal, subsequent to movant's request to appeal, the failure of the Court to allow movant a necessity defense. Movant did not have the evidence to support his defense, because counsel, even though he made 2 motions to postpone proceedings, did not come forth with the necessary support. Movant wanted to appeal this issue, but counsel said that such an appeal would have a detrimental affect on his suppression issue on appeal. However, counsel did not appeal either the suppression nor the necessity issue.

c.) Additionally, Counsel did not appeal movant's Sentencing issue regarding movant's request to appeal the misinformation in the Pre-Sentence Report. Here, there was a disagreement between movant and counsel regarding the objection to either a 2 point adjustment versus the objection to key areas of the PSI. Movant had wrote a letter to the Court about issues

and/or information in the PSI was incorrect. The Court asked Counsel if he wanted to discuss the letter, counsel declined. Movant asked Counsel to raise this issue on appeal.

Each of these issues that were not part of an appeal process has denied movant his right to a first appeal, because movant requested counsel to appeal these concerns, and counsel failed to do so, in violation of movant's 5th and 6th Amendment rights. Further, counsel exercises authority that belongs to the Appeals Court in deciding whether requested issues for appeal have merit, when counsel wrote letter to movant and told movant he would not raise any on appeal, as he did not believe there was any merit to any of his issues. Movant's Direct Appeal should be reinstated without a review under Strickland, as this error of counsel is per se ineffective.



Jose M. Bonilla-Siciliano

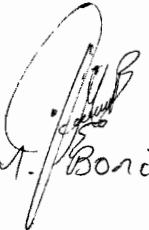
Continuation from Ground 2, pg 5

This is a Rule 32 violation by the District Court Judge for his failure to make factual findings on the information in the PSI. Movant had mailed a letter to the Court about the incorrect information in the PSI, among additional PSI concerns. The judge spoke to movant's counsel, during sentencing, as to whether counsel wanted to discuss the contents of the letter. Counsel declined. The information in the PSI remained as it was presented and the judge never made any individual and factual findings, even after movant said the PSI was not accurate.

Continuation from Ground 3, pg 6

This claim is again focusing on the sentencing hearing where counsel refused to make objections, prior to and during, the sentencing hearing. Movant had wrote a letter to the Court addressing the incorrect information in the PSI, and had sent counsel a copy. The court asked counsel if he wish to

address the contents of the letter. Counsel refused,
constituting ineffective assistance in allowing his client
to be sentenced on inaccurate information in the PSI.


Jose M. Bonilla Siciliano